

106TH CONGRESS  
2D SESSION

**S. 768**

---

---

**AMENDMENTS**



# ***In the House of Representatives, U. S.,***

*July 25, 2000.*

*Resolved*, That the bill from the Senate (S. 768) entitled “An Act to establish court-martial jurisdiction over civilians serving with the Armed Forces during contingency operations, and to establish Federal jurisdiction over crimes committed outside the United States by former members of the Armed Forces and civilians accompanying the Armed Forces outside the United States”, do pass with the following

## **AMENDMENTS:**

Strike out all after the enacting clause and insert:

1 ***SECTION 1. SHORT TITLE.***

2       *This Act may be cited as the “Military*  
3 *Extraterritorial Jurisdiction Act of 2000”.*

4 ***SEC. 2. FEDERAL JURISDICTION.***

5       *(a) CERTAIN CRIMINAL OFFENSES COMMITTED OUT-*  
6 *SIDE THE UNITED STATES.—Title 18, United States Code,*  
7 *is amended by inserting after chapter 211 the following new*  
8 *chapter:*

1                   **“CHAPTER 212—MILITARY**  
 2                   **EXTRATERRITORIAL JURISDICTION**

“Sec.

“3261. *Criminal offenses committed by certain members of the Armed Forces and by persons employed by or accompanying the Armed Forces outside the United States.*

“3262. *Arrest and commitment.*

“3263. *Delivery to authorities of foreign countries.*

“3264. *Limitation on removal.*

“3265. *Initial proceedings.*

“3266. *Regulations.*

“3267. *Definitions.*

3                   **“§ 3261. Criminal offenses committed by certain mem-**  
 4                   **bers of the Armed Forces and by persons**  
 5                   **employed by or accompanying the Armed**  
 6                   **Forces outside the United States**

7                   “(a) *Whoever engages in conduct outside the United*  
 8                   *States that would constitute an offense punishable by im-*  
 9                   *prisonment for more than 1 year if the conduct had been*  
 10                   *engaged in within the special maritime and territorial ju-*  
 11                   *risdiction of the United States—*

12                   “(1) *while employed by or accompanying the*  
 13                   *Armed Forces outside the United States; or*

14                   “(2) *while a member of the Armed Forces subject*  
 15                   *to chapter 47 of title 10 (the Uniform Code of Mili-*  
 16                   *tary Justice),*

17                   *shall be punished as provided for that offense.*

18                   “(b) *No prosecution may be commenced against a per-*  
 19                   *son under this section if a foreign government, in accord-*  
 20                   *ance with jurisdiction recognized by the United States, has*

1 prosecuted or is prosecuting such person for the conduct  
 2 constituting such offense, except upon the approval of the  
 3 Attorney General or the Deputy Attorney General (or a per-  
 4 son acting in either such capacity), which function of ap-  
 5 proval may not be delegated.

6 “(c) Nothing in this chapter may be construed to de-  
 7 prive a court-martial, military commission, provost court,  
 8 or other military tribunal of concurrent jurisdiction with  
 9 respect to offenders or offenses that by statute or by the law  
 10 of war may be tried by a court-martial, military commis-  
 11 sion, provost court, or other military tribunal.

12 “(d) No prosecution may be commenced against a  
 13 member of the Armed Forces subject to chapter 47 of title  
 14 10 (the Uniform Code of Military Justice) under this sec-  
 15 tion unless—

16 “(1) such member ceases to be subject to such  
 17 chapter; or

18 “(2) an indictment or information charges that  
 19 the member committed the offense with one or more  
 20 other defendants, at least one of whom is not subject  
 21 to such chapter.

## 22 **“§ 3262. Arrest and commitment**

23 “(a) The Secretary of Defense may designate and au-  
 24 thorize any person serving in a law enforcement position  
 25 in the Department of Defense to arrest, in accordance with

1 *applicable international agreements, outside the United*  
 2 *States any person described in section 3261(a) if there is*  
 3 *probable cause to believe that such person violated section*  
 4 *3261(a).*

5       “(b) *Except as provided in sections 3263 and 3264,*  
 6 *a person arrested under subsection (a) shall be delivered as*  
 7 *soon as practicable to the custody of civilian law enforce-*  
 8 *ment authorities of the United States for removal to the*  
 9 *United States for judicial proceedings in relation to conduct*  
 10 *referred to in such subsection unless such person has had*  
 11 *charges brought against him or her under chapter 47 of title*  
 12 *10 for such conduct.*

13 **“§ 3263. Delivery to authorities of foreign countries**

14       “(a) *Any person designated and authorized under sec-*  
 15 *tion 3262(a) may deliver a person described in section*  
 16 *3261(a) to the appropriate authorities of a foreign country*  
 17 *in which such person is alleged to have violated section*  
 18 *3261(a) if—*

19               “(1) *appropriate authorities of that country re-*  
 20 *quest the delivery of the person to such country for*  
 21 *trial for such conduct as an offense under the laws of*  
 22 *that country; and*

23               “(2) *the delivery of such person to that country*  
 24 *is authorized by a treaty or other international agree-*  
 25 *ment to which the United States is a party.*

1       “(b) *The Secretary of Defense, in consultation with the*  
 2 *Secretary of State, shall determine which officials of a for-*  
 3 *ign country constitute appropriate authorities for purposes*  
 4 *of this section.*

5       **“§ 3264. *Limitation on removal***

6       “(a) *Except as provided in subsection (b), and except*  
 7 *for a person delivered to authorities of a foreign country*  
 8 *under section 3263, a person arrested for or charged with*  
 9 *a violation of section 3261(a) shall not be removed—*

10               “(1) *to the United States; or*

11               “(2) *to any foreign country other than a country*  
 12 *in which such person is believed to have violated sec-*  
 13 *tion 3261(a).*

14       “(b) *The limitation in subsection (a) does not apply*  
 15 *if—*

16               “(1) *a Federal magistrate judge orders the per-*  
 17 *son to be removed to the United States to be present*  
 18 *at a detention hearing held pursuant to section*  
 19 *3142(f);*

20               “(2) *a Federal magistrate judge orders the deten-*  
 21 *tion of the person before trial pursuant to section*  
 22 *3142(e), in which case the person shall be promptly*  
 23 *removed to the United States for purposes of such de-*  
 24 *tention;*

1           “(3) the person is entitled to, and does not  
 2       waive, a preliminary examination under the Federal  
 3       Rules of Criminal Procedure, in which case the per-  
 4       son shall be removed to the United States in time for  
 5       such examination;

6           “(4) a Federal magistrate judge otherwise orders  
 7       the person to be removed to the United States; or

8           “(5) the Secretary of Defense determines that  
 9       military necessity requires that the limitations in  
 10      subsection (a) be waived, in which case the person  
 11      shall be removed to the nearest United States military  
 12      installation outside the United States adequate to de-  
 13      tain the person and to facilitate the initial appear-  
 14      ance described in section 3265(a).

15   **“§ 3265. Initial proceedings**

16       “(a)(1) In the case of any person arrested for or  
 17      charged with a violation of section 3261(a) who is not deliv-  
 18      ered to authorities of a foreign country under section 3263,  
 19      the initial appearance of that person under the Federal  
 20      Rules of Criminal Procedure—

21           “(A) shall be conducted by a Federal magistrate  
 22      judge; and

23           “(B) may be carried out by telephony or such  
 24      other means that enables voice communication among



1        *the participants, including any counsel representing*  
 2        *the person.*

3        *“(2) In conducting the initial appearance, the Federal*  
 4        *magistrate judge shall also determine whether there is prob-*  
 5        *able cause to believe that an offense under section 3261(a)*  
 6        *was committed and that the person committed it.*

7        *“(3) If the Federal magistrate judge determines that*  
 8        *probable cause exists that the person committed an offense*  
 9        *under section 3261(a), and if no motion is made seeking*  
 10       *the person’s detention before trial, the Federal magistrate*  
 11       *judge shall also determine at the initial appearance the con-*  
 12       *ditions of the person’s release before trial under chapter 207*  
 13       *of this title.*

14       *“(b) In the case of any person described in subsection*  
 15       *(a), any detention hearing of that person under section*  
 16       *3142(f)—*

17                *“(1) shall be conducted by a Federal magistrate*  
 18       *judge; and*

19                *“(2) at the request of the person, may be carried*  
 20       *out by telephony or such other means that enables*  
 21       *voice communication among the participants, includ-*  
 22       *ing any counsel representing the person.*

23        *“(c)(1) If any initial proceeding under this section*  
 24       *with respect to any such person is conducted while the per-*  
 25       *son is outside the United States, and the person is entitled*

1 *to have counsel appointed for purposes of such proceeding,*  
 2 *the Federal magistrate judge may appoint as such counsel*  
 3 *for purposes of such hearing a qualified military counsel.*

4       “(2) *For purposes of this subsection, the term ‘qualified*  
 5 *military counsel’ means a judge advocate made available*  
 6 *by the Secretary of Defense for purposes of such proceedings,*  
 7 *who—*

8               “(A) *is a graduate of an accredited law*  
 9 *school or is a member of the bar of a Federal*  
 10 *court or of the highest court of a State; and*

11              “(B) *is certified as competent to perform*  
 12 *such duties by the Judge Advocate General of the*  
 13 *armed force of which he is a member.*

14 **“§ 3266. Regulations**

15       “(a) *The Secretary of Defense, after consultation with*  
 16 *the Secretary of State and the Attorney General, shall pre-*  
 17 *scribe regulations governing the apprehension, detention,*  
 18 *delivery, and removal of persons under this chapter and the*  
 19 *facilitation of proceedings under section 3265. Such regula-*  
 20 *tions shall be uniform throughout the Department of De-*  
 21 *fense.*

22       “(b)(1) *The Secretary of Defense, after consultation*  
 23 *with the Secretary of State and the Attorney General, shall*  
 24 *prescribe regulations requiring that, to the maximum extent*  
 25 *practicable, notice shall be provided to any person employed*

1 *by or accompanying the Armed Forces outside the United*  
 2 *States who is not a national of the United States that such*  
 3 *person is potentially subject to the criminal jurisdiction of*  
 4 *the United States under this chapter.*

5 “(2) *A failure to provide notice in accordance with the*  
 6 *regulations prescribed under paragraph (1) shall not defeat*  
 7 *the jurisdiction of a court of the United States or provide*  
 8 *a defense in any judicial proceeding arising under this*  
 9 *chapter.*

10 “(c) *The regulations prescribed under this section, and*  
 11 *any amendments to those regulations, shall not take effect*  
 12 *before the date that is 90 days after the date on which the*  
 13 *Secretary of Defense submits a report containing those regu-*  
 14 *lations or amendments (as the case may be) to the Com-*  
 15 *mittee on the Judiciary of the House of Representatives and*  
 16 *the Committee on the Judiciary of the Senate.*

17 **“§ 3267. Definitions**

18 “*As used in this chapter:*

19 “(1) *The term ‘employed by the Armed Forces*  
 20 *outside the United States’ means—*

21 “(A) *employed as a civilian employee of the*  
 22 *Department of Defense (including a non-*  
 23 *appropriated fund instrumentality of the De-*  
 24 *partment), as a Department of Defense con-*  
 25 *tractor (including a subcontractor at any tier),*

1           or as an employee of a Department of Defense  
2           contractor (including a subcontractor at any  
3           tier);

4           “(B) present or residing outside the United  
5           States in connection with such employment; and

6           “(C) not a national of or ordinarily resi-  
7           dent in the host nation.

8           “(2) The term ‘accompanying the Armed Forces  
9           outside the United States’ means—

10          “(A) a dependent of—

11           “(i) a member of the Armed Forces;

12           “(ii) a civilian employee of the Depart-  
13           ment of Defense (including a non-  
14           appropriated fund instrumentality of the  
15           Department); or

16           “(iii) a Department of Defense con-  
17           tractor (including a subcontractor at any  
18           tier) or an employee of a Department of De-  
19           fense contractor (including a subcontractor  
20           at any tier);

21           “(B) residing with such member, civilian  
22           employee, contractor, or contractor employee out-  
23           side the United States; and

24           “(C) not a national of or ordinarily resi-  
25           dent in the host nation.

1           “(3) *The term ‘Armed Forces’ has the meaning*  
 2           *given the term ‘armed forces’ in section 101(a)(4) of*  
 3           *title 10.*

4           “(4) *The terms ‘Judge Advocate General’ and*  
 5           *‘judge advocate’ have the meanings given such terms*  
 6           *in section 801 of title 10.”.*

7           **(b) CLERICAL AMENDMENT.**—*The table of chapters for*  
 8           *part II of title 18, United States Code, is amended by in-*  
 9           *serting after the item relating to chapter 211 the following*  
 10          *new item:*

**“212. Military extraterritorial jurisdiction ..... 3261”.**

          Amend the title so as to read “An Act to amend title 18, United States Code, to establish Federal jurisdiction over offenses committed outside the United States by persons employed by or accompanying the Armed Forces, or by members of the Armed Forces who are released or separated from active duty prior to being identified and prosecuted for the commission of such offenses, and for other purposes.”.

Attest:

*Clerk.*